

1999 Assembly Bill 185

Date of enactment: **April 11, 2000**  
Date of publication\*: **April 25, 2000**

# 1999 WISCONSIN ACT 57

AN ACT *to amend* 139.87 (2), 139.89, 139.95 (1), 938.34 (14t), 940.02 (2) (a) (intro.), 940.02 (2) (a) 3., 940.02 (2) (b), 961.46 (3), 961.49 (2) (a) (intro.), 961.492 (1) and 961.495; *to repeal and recreate* 139.95 (2), 139.95 (3), 961.41 (1) (i), 961.41 (1m) (i) and 961.41 (2) (c); and *to create* 139.88 (3), 961.41 (1) (im), 961.41 (1m) (im), 961.41 (2) (cm) and 961.55 (6m) of the statutes; **relating to:** the controlled substances ketamine and flunitrazepam and providing penalties.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 139.87 (2) of the statutes is amended to read:

139.87 (2) “Dealer” means a person who in violation of ch. 961 possesses, manufactures, produces, ships, transports, delivers, distributes, imports, sells or transfers to another person more than 42.5 grams of material containing tetrahydrocannabinols, more than 5 plants containing tetrahydrocannabinols, more than 14 grams of mushrooms containing psilocin or psilocybin, more than 100 milligrams of any material containing lysergic acid diethylamide or more than 7 grams of any other schedule I or schedule II controlled substance or of a controlled substance analog of a schedule I or schedule II controlled substance or more than 7 grams of ketamine or flunitrazepam. “Dealer” does not include a person who lawfully possesses a controlled substance or controlled substance analog.

**SECTION 2.** 139.88 (3) of the statutes is created to read:

139.88 (3) Per gram or part of a gram of ketamine or flunitrazepam, whether pure or impure, measured when in the dealer’s possession, \$200.

**SECTION 3.** 139.89 of the statutes is amended to read:

**139.89 Proof of payment.** The department shall create a uniform system of providing, affixing and displaying stamps, labels or other evidence that the tax under s. 139.88 has been paid. Stamps or other evidence of payment shall be sold at face value. No dealer may possess any schedule I controlled substance or schedule II controlled substance or ketamine or flunitrazepam unless the tax under s. 139.88 has been paid on it, as evidenced by a stamp or other official evidence issued by the department. The tax under this subchapter is due and payable immediately upon acquisition or possessing of the schedule I controlled substance or schedule II controlled substance or ketamine or flunitrazepam in this state, and the department at that time has a lien on all of the taxpayer’s property. Late payments are subject to interest at the rate of 1% per month or part of a month. No person may transfer to another person a stamp or other evidence of payment.

**SECTION 4.** 139.95 (1) of the statutes is amended to read:

139.95 (1) Any dealer who possesses a schedule I controlled substance or a schedule II controlled substance or ketamine or flunitrazepam that does not bear evidence that the tax under s. 139.88 has been paid shall

\* Section 991.11, WISCONSIN STATUTES 1997–98: Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

pay, in addition to the tax under s. 139.88, a penalty equal to the tax due. The department shall collect penalties under this subchapter in the same manner as it collects the tax under this subchapter.

**SECTION 5.** 139.95 (2) of the statutes, as affected by 1997 Wisconsin Act 283, is repealed and recreated to read:

139.95 (2) A dealer who possesses a schedule I controlled substance, a schedule II controlled substance or ketamine or flunitrazepam that does not bear evidence that the tax under s. 139.88 has been paid may be fined not more than \$10,000 or imprisoned for not more than 7 years and 6 months or both.

**SECTION 6.** 139.95 (3) of the statutes, as affected by 1997 Wisconsin Act 283, is repealed and recreated to read:

139.95 (3) Any person who falsely or fraudulently makes, alters or counterfeits any stamp or procures or causes the same to be done or who knowingly utters, publishes, passes or tenders as true any false, altered or counterfeit stamp or who affixes a counterfeit stamp to a schedule I controlled substance, a schedule II controlled substance or ketamine or flunitrazepam or who possesses a schedule I controlled substance, a schedule II controlled substance or ketamine or flunitrazepam to which a false, altered or counterfeit stamp is affixed may be fined not more than \$10,000 or imprisoned for not less than one year nor more than 15 years or both.

**SECTION 7.** 938.34 (14t) of the statutes is amended to read:

938.34 (14t) POSSESSION OF A CONTROLLED SUBSTANCE OR CONTROLLED SUBSTANCE ANALOG ON OR NEAR CERTAIN PREMISES. If the juvenile is adjudicated delinquent under a violation of s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II under ch. 961 ~~or~~ a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or ketamine or flunitrazepam while in or on the premises of a scattered-site public housing project, as defined in s. 961.01 (20i), while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, as defined in s. 961.01 (12m), a multiunit public housing project, as defined in s. 961.01 (14m), a swimming pool open to members of the public, a youth center, as defined in s. 961.01 (22), or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall require that the juvenile participate for 100 hours in a supervised work program or other community service work under sub. (5g).

**SECTION 8.** 940.02 (2) (a) (intro.) of the statutes is amended to read:

940.02 (2) (a) (intro.) By manufacture, distribution or delivery, in violation of s. 961.41, of a controlled sub-

stance included in schedule I or II under ch. 961 ~~or~~ of a controlled substance analog of a controlled substance included in schedule I or II under ch. 961 or of ketamine or flunitrazepam, if another human being uses the controlled substance or controlled substance analog and dies as a result of that use. This paragraph applies:

**SECTION 9.** 940.02 (2) (a) 3. of the statutes is amended to read:

940.02 (2) (a) 3. To any distribution or delivery described in this paragraph, regardless of whether the distribution or delivery is made directly to the human being who dies. If possession of the controlled substance included in schedule I or II under ch. 961 ~~or~~ of the controlled substance analog of the controlled substance included in schedule I or II under ch. 961 or of the ketamine or flunitrazepam is transferred more than once prior to the death as described in this paragraph, each person who distributes or delivers the controlled substance or controlled substance analog in violation of s. 961.41 is guilty under this paragraph.

**SECTION 10.** 940.02 (2) (b) of the statutes is amended to read:

940.02 (2) (b) By administering or assisting in administering a controlled substance included in schedule I or II under ch. 961 ~~or~~ a controlled substance analog of a controlled substance included in schedule I or II of ch. 961 or ketamine or flunitrazepam, without lawful authority to do so, to another human being and that human being dies as a result of the use of the substance. This paragraph applies whether the human being dies as a result of using the controlled substance or controlled substance analog by itself or with any compound, mixture, diluent or other substance mixed or combined with the controlled substance or controlled substance analog.

**SECTION 11.** 961.41 (1) (i) of the statutes, as affected by 1997 Wisconsin Act 283, is repealed and recreated to read:

961.41 (1) (i) Except as provided in par. (im), a substance included in schedule IV, may be fined not more than \$10,000 or imprisoned for not more than 4 years and 6 months or both.

**SECTION 12.** 961.41 (1) (im) of the statutes is created to read:

961.41 (1) (im) Flunitrazepam, may be fined not more than \$15,000 or imprisoned for not more than 7 years and 6 months or both.

**SECTION 13.** 961.41 (1m) (i) of the statutes, as affected by 1997 Wisconsin Act 283, is repealed and recreated to read:

961.41 (1m) (i) Except as provided in par. (im), a substance included in schedule IV, may be fined not more than \$10,000 or imprisoned for not more than 4 years and 6 months or both.

**SECTION 14.** 961.41 (1m) (im) of the statutes is created to read:

961.41 (1m) (im) Flunitrazepam, may be fined not more than \$15,000 or imprisoned for not more than 7 years and 6 months or both.

**SECTION 15.** 961.41 (2) (c) of the statutes, as affected by 1997 Wisconsin Act 283, is repealed and recreated to read:

961.41 (2) (c) Except as provided in par. (cm), a counterfeit substance included in schedule IV, may be fined not more than \$10,000 or imprisoned for not more than 4 years and 6 months or both.

**SECTION 16.** 961.41 (2) (cm) of the statutes is created to read:

961.41 (2) (cm) A counterfeit substance which is flunitrazepam, may be fined not more than \$15,000 or imprisoned for not more than 7 years and 6 months or both.

**SECTION 17.** 961.46 (3) of the statutes, as affected by 1999 Wisconsin Act .... (Assembly Bill 318), is amended to read:

961.46 (3) If any person 17 years of age or over violates s. 961.41 (1) (cm), (d), (e), (em), (f), (g) ~~or~~ (h) or (im) by distributing or delivering cocaine, cocaine base, heroin, phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine, methamphetamine, methcathinone, flunitrazepam or any form of tetrahydrocannabinols or a controlled substance analog of any of these substances to a person 17 years of age or under who is at least 3 years his or her junior, any applicable minimum and maximum fines and minimum and maximum periods of imprisonment under s. 961.41 (1) (cm), (d), (e), (em), (f), (g) ~~or~~ (h) or (im) are doubled.

**SECTION 18.** 961.49 (2) (a) (intro.) of the statutes, as affected by 1999 Wisconsin Act .... (Senate Bill 146), is amended to read:

961.49 (2) (a) (intro.) Except as provided in par. (b), the court shall sentence a person as provided in par. (am) if the person violates s. 961.41 (1) by delivering or distributing, or violates s. 961.41 (1m) by possessing with intent to deliver or distribute, a controlled substance included in schedule I or II ~~or~~ a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam under any of the following circumstances:

**SECTION 19.** 961.492 (1) of the statutes is amended to read:

961.492 (1) The violation of s. 961.41 (1) or (1m) involves the distribution or delivery or the possession,

with intent to distribute or deliver, of any controlled substance included in schedule I or II ~~or~~ of a controlled substance analog of any controlled substance included in schedule I or II or of ketamine or flunitrazepam.

**SECTION 20.** 961.495 of the statutes is amended to read:

**961.495 Possession or attempted possession of a controlled substance on or near certain places.** If any person violates s. 961.41 (3g) by possessing or attempting to possess a controlled substance included in schedule I or II ~~or~~ a controlled substance analog of a controlled substance included in schedule I or II or ketamine or flunitrazepam while in or on the premises of a scattered-site public housing project, while in or on or otherwise within 1,000 feet of a state, county, city, village or town park, a jail or correctional facility, a multiunit public housing project, a swimming pool open to members of the public, a youth center or a community center, while in or on or otherwise within 1,000 feet of any private or public school premises or while in or on or otherwise within 1,000 feet of a school bus, as defined in s. 340.01 (56), the court shall, in addition to any other penalties that may apply to the crime, impose 100 hours of community service work for a public agency or a nonprofit charitable organization. The court shall ensure that the defendant is provided a written statement of the terms of the community service order and that the community service order is monitored. Any organization or agency acting in good faith to which a defendant is assigned pursuant to an order under this section has immunity from any civil liability in excess of \$25,000 for acts or omissions by or impacting on the defendant.

**SECTION 21.** 961.55 (6m) of the statutes is created to read:

961.55 (6m) Flunitrazepam or ketamine that is possessed, transferred, sold, offered for sale or attempted to be possessed in violation of this chapter is contraband and shall be seized and summarily forfeited to the state. Flunitrazepam or ketamine that is seized or comes into the possession of the state, the owner of which is unknown, is contraband and shall be summarily forfeited to the state.

**SECTION 22. Initial applicability.**

(1) This act first applies to acts in violation of chapter 961 of the statutes that occur on the effective date of this subsection.